

PROPOSALS TO CHANGE
SEN. BARTLETT'S or REP. FLETCHER'S
DRAFT PROPOSALS

FROM EXECUTIVE BRANCH

1. Governor's office
2. MSHA
3. Energy and Carbon Savings Trustees
4. MTA

Governor's Office Proposals

Dear Jon:

Thank you and Senator Bartlett for considering the proposed changes to "Draft Committee Bill" Proposed by Senator Bartlett. There are 7 (seven) major points set forth below. You will hear from MaineHousing and Public Utilities Commission/Efficiency Maine separately.

First, we note that we are supportive of the "Draft Committee Bill" proposed by Rep. Fletcher ~ this is the operating framework that we believe is most workable for achieving Maine's energy efficiency goals.

Second, we do **not** support the proposed oversight of the Efficiency Maine Trust by the Public Utilities Commission. Therefore, we support the Fletcher draft regarding "Measures of Performance" found on page 6; we would delete "Commission oversight of Efficiency Maine Trust: on pages 34-35; and we would establish the relationship between the Efficiency entity and the Legislature as proposed in Fletcher's draft.

Third, the following comments were developed in consultation with Chip Gavin, Director of the Bureau of General Services:

Item. Pages 48-49

Suggested addition:

4. Duties; corridors; plan.....

.....In developing the plan, the Commission shall not make proposals or recommendations which infringe or interfere with the existing lease and property authority of the Department of Administrative and Financial Services, including authority pursuant to 5MRSA, Chapter 153, and 5MRSA, Chapter 154.

Comment: This is intended to avoid duplication, conflicts or confusion with the existing lease and property authority of DAFS/BGS, and to see that the energy corridor initiative can go forward smoothly without this kind of unexpected complication. BGS does not seek to do energy corridor leasing and, conversely, would not want its authority and actions infringed by the energy corridor initiative.

Item. Page 50

Suggestion addition:

3. Limitations; exceptions:

.....Nothing in this section prohibits the state or a state authority from entering contractual agreements for energy resources for its own use even if such contracts involve occupancy agreements, or from entering occupancy agreements if the intended outcome is the delivery of energy resource for the state or state authority's own use.

Comment: This is intended to avoid the energy corridor initiative disrupting the potential project to eliminate the use of heating oil on the East Campus. We are particularly seeking to avoid having LR1989 disrupt the extension of a natural gas line to the East Campus if such an extension proves necessary or desirable. It was not clear to us the initiative would disrupt that project, but we seek to make sure it does not.

Fourth, we continue to believe that a Legislative Study is **not** the appropriate mechanism to develop the valuation and allocation methodologies and interrelationships concerning the use of state transportation corridors and other state assets. **Attached (copied below)** is the draft Executive Order Study that the Governor supports and that can be carefully and expertly conducted by the Executive Branch to bring to the Legislature for approval. An Executive Order Study will effectively include legislators and update oversight committees throughout the process. We have had notable success with the Wind Power Executive Order Study and the Ocean Energy Executive Order Study that would serve as models for a Corridor Study. The Department of Transportation should also be included in any report back language.

DRAFT – NOT APPROVED – DRAFT
April 22, 2009

Outline of Potential Executive Order Relating to Certain Energy Corridors

Whereas, a variety of proposals for energy transmission projects connecting energy generation to energy consuming markets are under consideration; and

Whereas, proposals for leasing, permitting or otherwise state-owned lands or interests in lands for energy-related corridors are currently being contemplated as potential locations for energy transmission projects; and

Whereas, the State must ensure that locating such activities within the rights-of-way of the state highway system, the federal interstate highway system, state-owned or state-controlled rail corridors or other state transportation corridors are undertaken carefully, taking into account various important factors; and

Whereas, it is important that there be adequate research, analysis and public input regarding the implications, valuation and allocation methodologies regarding the occupancy of state-owned lands to maximize the long-term public value; and

Now, Therefore, I John E. Baldacci, Governor of the State of Maine, do hereby establish the Governor's Study Committee on Energy Corridors.

Purpose and Duties

The Committee shall study the feasibility and economic impact of the state entering into agreements allowing the longitudinal installation of lines, cables, pipelines or other structures for

the transmission or generation of energy, communication transmission systems or related facilities within the rights-of-way of the state highway system, the federal interstate highway system, state-owned or state-controlled rail corridors or other state transportation.

The Committee shall develop a Report with a plan governing such agreements regarding the use of state-owned lands or interests in lands for the purpose of energy corridors that specifically considers the following:

- A. Appropriate valuation and pricing methodologies to maximize the long-term public value;
- B. Appropriate allocation methodologies to maximize the long-term public value through the most efficient and effective use of the state-owned lands and assets;
- C. The potential effect of such agreements on the development of other energy projects in Maine including but not limited to liquefied natural gas terminals;

DRAFT – NOT APPROVED – DRAFT
April 22, 2009

- D. The information, analysis and results of the *New England States Regional Energy Blueprint* being prepared by ISO-NE for the New England Governors and the New England States' Committee on Electricity; and
- E. Proposed or pending federal energy legislation that may significantly affect energy transmission siting policy in this State.

The Report shall set forth the Committee's findings and recommendations, a plan for governing occupancy agreements and any suggested legislation for presentation to the Governor and to the Joint Standing Committee on Utilities and Energy.

Membership

The Governor shall appoint 10 members to the Study Committee:

PUC

OEIS

Public Advocate

Dept. of Transportation

Dept. of Administrative and Financial Services

5 public members representing: industrial consumer, residential consumer, transmission development interest, energy generation interest, environmental

4 ? legislators – 2 named by Senate President and 2 named by Speaker of the House to reflect geographic and party diversity.

The Committee shall seek input from members of the public, stakeholders, persons with relevant expertise and other state agencies.

Report

The Study Committee shall submit its findings and recommendations in a Report no later than November 1, 2009.

Effective Date

____, 2009

Moreover, the language in the Bartlett draft permits a very broad and expensive study that could end up being very costly and, because of its breadth and scope, potentially chilling to renewable energy development. Therefore, at a minimum, **the following changes** would be essential to address our concern that the Study purpose is too broadly described and therefore will be very costly:

Sec. 4. Commission established. The Commission to Study Energy Infrastructure, referred to in this section as "the commission" is established.

1. Membership. The commission consists of 13 members appointed as follows:

- A. Three members of the Senate appointed by the President of the Senate;
- B. Seven members of the House of Representatives appointed by the Speaker of the House; and
- C. Three members appointed by the Governor.

1 Chairs. The first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the Commission.

2 Appointments; convening. All appointments must be made no later than 30 days following the effective date of this section. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. Within 15 days after appointment of all members, the chairs shall call and convene the first meeting of the commission.

3 Duties; corridors; plan. The commission shall examine the feasibility and effects of the state entering into agreements for leasing or otherwise allowing the use of state-owned lands or assets, including submerged lands, the rights-of-way of the state highway system, the federal interstate highway system, state-owned or state-controlled rail corridors or other state transportation corridors, for the installation of lines, cables, pipelines or other structures for the transmission of energy

resources, communication transmission systems or related facilities. The commission shall develop a recommended plan governing such agreements that addresses at least the following:

A. Appropriate valuation, pricing and allocation methodologies to maximize the long-term public value through the most efficient and effective use of the state-owned lands and assets; and

B. The potential effect of such agreements on renewable energy development in Maine; the development of other energy projects in Maine, including but not limited to liquefied natural gas terminals; energy consumers and ratepayers; and natural resources and the environment.

In developing the plan, the commission shall review and analyze the information, analysis and results of the New England States Regional Energy Blueprint being prepared by ISO-NE for the New England Governors and the New England States' Committee on Electricity. The commission shall also examine and monitor proposed or pending federal energy legislation that may significantly affect energy policy in this State. ~~The commission may also examine and develop findings and recommendations concerning other proposed or potential energy infrastructure and transmission projects that may have significant effects on state energy policy, including but not limited to projects relating to electric transmission systems, including new lines, system upgrades or the development of a smart grid, or natural gas systems, including pipelines and liquefied natural gas terminals.~~

5. Staff; consultants; other assistance. The Legislative Council shall provide staffing services to the commission. The commission shall seek input from relevant agencies, stakeholders and persons with expertise. All agencies with relevant expertise shall provide technical or other assistance requested by the commission. The commission may retain consultants and other experts to assist the commission in its work.

7. Report. No later than December 2, 2009 the Commission shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 124th Legislature. The Joint Standing Committee on Utilities and Energy is authorized to introduce a bill related to the subject matter of the report to the Second Regular Session of the 124th Legislature upon receipt of the report

8. Funding. The following funds are allocated to fund the work of the study:

(OFPR: insert allocation of \$200,000 from the Public Utilities Commission to the Legislature to fund the study **NOTE: please obtain PUC's reaction to this.**)

Fifth, the Governor's intent to establish general guidance on the use of any funds generated by the use of state assets was not included in Sen. Bartlett's draft. We urge the inclusion of the following language at the end of Sec. 3 on page 48:

Sec. G-3. 5 MRSA §282, sub-§9 is enacted to read:

9. Energy Independence Fund; revenues from occupancy of state assets. To establish an energy independence fund from the revenues derived

The revenues must be used for the following purposes:

- A. To ensure methodical transition to energy independence and security for the people, communities, economy and environment of the State;
- B. To transform the ways homes and businesses are heated, energy is used and people and cargo are transported; and
- C. To gain independence from foreign oil and to maximize energy efficiency, to enhance renewable energy sources and to invest in an economic development strategy to ensure a vibrant, environmentally sound and prosperous future.

Sixth, the Administration remains concerned about the provisions included on Pages 45 and 46 that would redirect portions of the Real Estate Transfer Tax for revenue bonds. Under the current Revenue Forecast, the RETT is expected to generate \$34m in undedicated revenue to the General Fund in the next biennium. While everyone is clearly aware of the recent impact of the Revenue Forecasting Committee's report on the current budget, that report actually reduces revenues in 2012 – 2013 budget by a larger amount. Coupled with losses at the Maine State Retirement System that have the potential to increase retirement contributions by as much as \$500m in the next budget cycle, we would recommend the Committee consider carefully the impact of any further revenue reductions in the next biennium.

Seventh, the Department of Labor asks that under Part G, Workforce Development, on page 51, that the Report deadline be changed to December 31, 2009. This is specifically based on input from Mr. John Dorrer who is integrating the timing of work to be completed under the Stimulus. The September 30, 2009 deadline is not workable given all the requirements and other deadlines. They also request that the Labor Committee be included in the Report back language.

May 8, 2009

To: Senator Philip Bartlett, Chair
Representative John Martin, Chair
Members, Joint Select Committee on Maine's Energy Future

From: Dale McCormick, Director

Re: Comments on Draft Legislation

We are pleased to offer our comments on the proposals before the Committee. We have a few general comments and specific comments in five areas.

In broad scope, we are concerned that Senator Bartlett's 'straw man' draft creates a structure that is too cumbersome. One key reason for the Trust to be separate from traditional state government is to be more nimble and entrepreneurial. As drafted, the Trust is beholden to the PUC for approval of its plan and to the state government for its financial management. In earlier testimony before the committee, we encouraged coordinated planning and strategic approaches. We also cautioned that some of the proposals seemed to create additional layers of bureaucracy that would not provide additional benefits. While those comments were specific to our programs, we suggest that in general, the Committee create a Trust that can be as nimble as possible.

Our specific comments fall into five areas:

- 1) *LIHEAP and Weatherization.* We do not believe that there is any value added to having the federal LIHEAP and Weatherization programs included in the triennial plan. These programs are governed by complex federal laws and regulation. This Committee saw, when we presented the ARRA proposals, just how little room there is for additional input. The programs are subject to federal funding and changes in federal law every year. Requiring additional approval by the Trust and then the PUC is cumbersome without any practical benefit and will create logistical headaches.

We strongly support the coordination of these programs coordinate with the Trust so that they are an integral part of the State's comprehensive energy strategy and plan.

- 2) *Voluntary Carbon Market.* MaineHousing, with the housing authorities in New Jersey and Pennsylvania, is developing a pilot Carbon Project to measure, monitor, and sell the carbon emissions avoided from weatherizing Maine homes. The main goal of the Carbon Project is to generate a sustainable revenue source to expand our current weatherization efforts. In order for the credits to be certified, they must meet voluntary market standards. One of the standards is that the reductions are voluntary – that they are not mandated by the State.

To make this clear to the certifying organizations, we are proposing appropriate language for both Senator Bartlett's draft and Rep. Fletcher's draft that states that Maine does not intend, through the energy bill, to prohibit any entity from generating revenue from the sale of real carbon emission reductions. The language ensures that entities are free to take voluntary steps to achieve real reductions in their carbon emissions and to sell those emission reductions. Without this language, the bill could be interpreted to prohibit this possibility.

- 3) *Energy Auditor Training* – There is a lot of detail in here that might be better left to the Trust to decide. In particular, Section 10114, Subsection 1, Paragraph D is too prescriptive. We worry that there may be unintended consequences that might make it difficult for MaineHousing and the Trust to coordinate auditor training.

Also, Section 10104, Sub-section 7 states the Trust will “establish certification standards for energy auditors, installers of energy efficiency measures, or other service providers....” Part C, Section E-1, Paragraph 13 (Adoption of state standards) again references standards for energy auditors and installers of energy efficiency measures. However, Section 10114, Sub-section 1 establishes guidelines for the Trust in developing energy auditor standards but is silent on training guidelines for installers of energy efficiency measures.

- 4) *Affordable Housing – Part E.* We have comments on some of the new language.
- 5) *Workforce Development – Part G.* We will defer to the Department of Labor and the PUC, but it seems to us that the report back date of September 1, 2009 is too soon to have a thorough, detailed analysis.

Sec. 4. 30-A MRSA §4741, sub-§15, as amended by PL 1991, c. 871, §2, is further amended to read:

15. State weatherization, conservation and fuel assistance agency for low-income persons. The Maine State Housing Authority is designated the weatherization, energy conservation and fuel assistance agency for low-income persons in the State and in accordance with Title 35-A, section 10104, subsection 4 may apply for, receive, distribute and administer federal funds on behalf of the State for weatherization, energy conservation and fuel assistance pursuant to the Weatherization Assistance for Low-income Persons Program administered through the United States Department of Energy and the Low-income Home Energy Assistance Program administered through the United States Department of Health and Human Services in accordance with rules adopted under the Maine Administrative Procedure Act;

These changes are not necessary. The federal programs define who they assist so 'low income' is not needed. As stated before, these programs and the people they serve will not benefit from being formally approved by the Trust.

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MSHA's suggested changes:

pp. 3-4:

§10103. Efficiency Maine Trust

1. Establishment; purpose. The Efficiency Maine Trust, as established in Title 5, section 12004-G, subsection 10-C, is a public body corporate and politic and instrumentality of the state exercising essential government functions. The trust is established to:

A. Provide uniform, integrated planning, program design and administration of energy efficiency programs pursuant to this chapter and any other provisions of law administered by the trust

B. Reduce energy costs and improve security of the state and local economies. The trust shall administer cost-effective energy efficiency programs to help families and businesses meet their energy needs at the lowest cost and generally to improve the economic security of the State by:

(1) Maximizing the use of cost-effective energy efficiency and weatherization;

(2) Reducing economic insecurity from overdependence on price-volatile heating fuels;

(3) Increasing new jobs and business development to deliver energy efficiency products and services;

(4) Enhancing heating benefits for low-income-eligible households through weatherization, thus improving the comfort and indoor air quality of these households and reducing the need for future fuel assistance;

(5) Simplifying and enhancing consumer access to technical assistance and financial incentives for energy efficiency and weatherization by merging OR COORDINATING dispersed, uncoordinated programs under a single administrative unit possessing independent management and expertise; and

(6) Using cost-effective energy efficiency investments to reduce greenhouse gas emissions;

C. Ensure that all expenditures of the trust are cost-effective in terms of avoided energy costs.

D. Nothing in this chapter shall constitute a mandate that would prevent the sale of carbon emission reductions into the voluntary carbon market.

(no proposed changes in rest of section)

P. 6-11

§10104. Duties.

The duties of the trust are as set out in this subsection.

1. Generally. In accordance with this section and other applicable law, the trust administers and disburses funds AND COORDINATES PROGRAMS to promote energy efficiency in the State. The trust is responsible for accounting for, evaluating and monitoring all activities of the trust and all programs funded in whole or in part by the trust

2. Programs. The trust shall plan, design and administer programs to ensure that funds are expended for uses consistent with applicable state or federal law and so that the following principles of administration are met:

A. Programs are consumer oriented such that the processes for participation and program design are targeted to serve the multiple needs of energy consumers in this State;

B The effectiveness of programs is maximized by building up and centralizing expertise, addressing conflicts of interest, mitigating the influence of politics, promoting flexible, nimble program management and providing a champion for funding cost-effective energy efficiency;

C. The efficiency with which programs are planned, designed, overseen and delivered is maximized; and

D. Sufficient checks and balances are provided to ensure consistency with public policy and accountability for meeting the principles set out in paragraphs A to C so that energy efficiency programs in the State are sustainable for the long term.

3. Measures of performance. The trust shall develop quantifiable measures of performance to which it will be held accountable by the commission. Measures of performance must be negotiated between the trust and the commission and must be ratified by the commission, as provided in section 10119, prior to being incorporated into the triennial plan under subsection 4. The measures must be established for a 3-year period, with revisions allowable by mutual agreement. The trust shall also develop quantifiable measures of performance to which it will hold accountable all recipients of funding from the trust and recipients of funds used to deliver energy efficiency and weatherization programs that are incorporated in the triennial plan and approved by the trust ADMINISTERED OR FUNDED BY THE TRUST. Such measures may include, but are not limited to, reduced energy consumption, reduced capacity demand for natural gas and electricity, reduced energy costs, reduced carbon dioxide emissions, program and overhead costs and cost-effectiveness, the number of new jobs created by the award of trust funds, the number of energy efficiency trainings or certification courses completed and the amount of sales generated.

4. Triennial plan. The board shall vote on a detailed, triennial energy efficiency and conservation plan and make a full report of the vote to the commission in accordance with this subsection. The triennial plan must provide integrated planning, program design and implementation strategies for all energy efficiency and conservation programs administered by the trust, including but not limited to the electric efficiency and conservation programs under section 10110, the natural gas efficiency and conservation programs under section 10111, the Regional Greenhouse Gas Initiative Trust Fund under section 10109 and any state or federal funds or publicly directed funds accepted by or allocated to the trust for the purpose of investing in energy efficiency programs in the State.

A. The triennial plan must be developed by the trust, in consultation with entities and agencies engaged in delivering efficiency programs in the State, to authorize and govern COORDINATE implementation of energy efficiency and weatherization programs in the State.

(1) Transmission and distribution utilities shall furnish data to the trust that the trust requests under this subsection subject to such confidential treatment as a utility may request and the board determines appropriate pursuant to section 10106. The costs of providing the data are deemed reasonable and prudent expenses of the utilities and are recoverable in rates.

(2) Natural gas utilities shall furnish data to the trust that the trust requests under this subsection subject to such confidential treatment as a utility may request and the board determines appropriate pursuant to section 10106. The costs of providing the data are deemed reasonable and prudent expenses of the utilities and are recoverable in rates.

(3) A THE designated state agency AUTHORITY, community action agency or unit of local government eligible to apply for funds under 42 United States Code, Section 6863(c) shall

COORDINATE ITS MANAGEMENT OF WEATHERIZATION PROGRAMS WITH THE TRUST WITH THE GOAL OF PROVIDING EFFICIENT AND COORDINATED SERVICES. submit to the trust for review and approval an initial 3-year implementation plan to be incorporated into the triennial plan. An agency or unit of local government may not submit any annual plans or application to the federal government pursuant to 42 United States Code, Section 6864 or make expenditures for purposes of implementing federal Weatherization Assistance Program funds until the board reviews and approves the plan or application. In reviewing the plan or application the board shall consider if it is consistent with the rest of the triennial plan, best practices of program administration, the state energy efficiency targets under paragraph F and the objective of integrating delivery of thermal and electric efficiency measures to the maximum extent practicable.

B. In developing the triennial plan, the staff of the trust shall consult the board and provide the opportunity for the board to provide input on drafts of the plan.

C. The board shall review and approve the triennial plan by affirmative vote of 2/3 of the voting members upon a finding that the plan is consistent with the statutory authority for each source of funds that will be used to implement the plan, the state energy efficiency targets in paragraph F and the best practices of program administration under subsection 2. The plan must include, but is not limited to, efficiency and conservation program budget allocations, objectives, targets, measures of performance, program designs, program implementation strategies, timelines and other relevant information.

D. The board shall deliver the triennial plan to the commission for its review and approval. The commission shall reject elements of the plan that propose to use funds generated pursuant to sections 10110 (electric SBC), 10111 (natural gas SBC) or (any heating fuel SBC) if the plan fails to reasonably explain how these elements of the program would achieve the objectives and implementation requirements of (electric conservation program, natural gas conservation program, any heating fuels programs) or the negotiated measures of performance under section 10012, subsection 1. Funds generated under these statutory authorities may not be used pursuant to the triennial plan unless and until those elements of the plan proposing to use the funds have been approved by the commission. The commission shall approve or reject any elements of the triennial plan within 60 days of its delivery to the commission.

E. The trust shall determine the period to be covered by the triennial plan except that the period of the plan may not interfere with the delivery of any existing contracts to provide energy efficiency services that were previously procured pursuant to efficiency and conservation programs administered by the commission.

F. It is an objective of the triennial plan to design, coordinate and integrate sustained energy efficiency and weatherization programs that are available to all energy consumers in the State, regardless of fuel type, that advance the targets of:

(1) Reducing by 20% the State's dependence on imported heating fuels by 2020;

(2) Capturing all cost-effective energy efficiency resources available for electric and natural gas utility ratepayers;

(3) Saving residential and commercial heating consumers not less than \$3 for every \$1 of program funds invested by 2020 in heating and cooling cost-effective measures that cost less than conventional energy supply

(4) Building stable private sector jobs providing clean energy and energy efficiency products and services in the State by 2020; and

(5) Reducing greenhouse gas emissions from the heating and cooling of buildings in the State by amounts consistent with the State goals established in Title 38, section 576.

5. Report. The trust shall report by December 1st of each year to the commission and the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report must include:

A. A description of actions taken by the trust pursuant to this section, including descriptions of all energy efficiency, weatherization and conservation programs implemented during the prior 12 months and all programs that the commission plans EXPECTS to implement during the next 12 months, a description of how the trust determines the cost-effectiveness of each program and its assessment of the cost-effectiveness of programs implemented during the prior 12 months;

B. An accounting of:

(1) Assessments made on each transmission and distribution utility pursuant to section 10110 (electric SBC) during the prior 12 months and projected assessments during the next 12 months and total deposits into and expenditures from the program fund during the prior 12 months and projected deposits into and expenditures from the program funds during the next 12 months;

(2) Assessments made pursuant to section 10111 (natural gas SBC) during the prior 12 months and projected assessments during the next 12 months and total deposits into and expenditures from the natural gas conservation fund during the prior 12 months and projected deposits into and expenditures from the natural gas conservation fund during the next 12 months; and

(3) Any hat fuel assessments made pursuant to section 10118 during the prior 12 months and projected assessments during the next 12 months and total deposits into and expenditures from the Heating Fuels Efficiency and Weatherization Fund during the prior 12 months and projected deposits into and expenditures from the Heating Fuels Efficiency and Weatherization Fund during the next 12;

(4) Total funds received and expended ~~in~~ BY the State on energy efficiency and weatherization pursuant to the Weatherization Assistance Program of the United States Department of Energy and the Low-income Home Energy Assistance Program of the United States Department of Health and Human Services;

(5) The amount and source of any grants or funds deposited in the program fund pursuant to section 10110 during the previous 12 months and the projected amount and source of any such funds during the next 12 months; and

(7) Total deposits into and expenditures from the conservation administration fund under section 10110 during the prior 12 months and projected deposits into and expenditures from the conservation administration fund during the next 12 months;

C. Any recommendations for changes to the laws relating to energy conservation; and

D. The performance of the trust and individual programs and program delivery agents or service providers in meeting the objectives, targets and measures of performance approved by the commission and contained in the triennial plan.

The report must be approved by the board before being presented to the commission and the joint standing committee of the Legislature having jurisdiction over utilities and energy matters.

6. Updated plans. Within 30 days of completion of the annual report:

A. The director shall submit to the board an annual update plan describing any significant changes to the triennial plan under subsection 4 related to program budget allocations, goals, targets, measures of performance, program designs, implementation strategies, timelines and other relevant information for the year ahead for all subaccounts administered and managed by the trust. The director, any contractor, grantee or agency delivering programs may not execute any significant changes until approved by the board and, in the case of significant changes to programs using funds generated by assessments under this chapter, also by the commission using the same standard as for the triennial plan; and

B. An agency AUTHORITY administering weatherization or efficiency programs for low-income persons shall submit to the trust an annual update plan describing any significant changes to the triennial plan related to program budget allocations, goals, targets, measures of performance, program designs and timelines and other relevant information for THE WEATHERIZATION ASSISTANCE PROGRAM OF THE UNITED STATES DEPARTMENT OF ENERGY AND THE LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES all efficiency and weatherization programs agency administers. Expenditures for any significant changes to the approved plan may not be authorized until the board has reviewed and approved any subsequent annual update plan.

All annual update plans must be presented to the commission and the joint standing committee of the Legislature having jurisdiction over utilities and energy matters.

7. Certification. The trust shall by rule establish certification standards for energy auditors, installers of energy efficiency measures, or other service providers that provides services under programs administered by the trust. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

8. Other duties. The trust shall do all things necessary or convenient to carry out the lawful purposes of the trust.

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#### § 10114. Training for energy auditors

1. Auditor training. To the extent that funds and resources allow, the trust shall set standards for training programs for energy auditors that most effectively meet the needs of the public and that satisfy the requirements of funding sources. For the purposes of this subsection, an energy auditor is a person who is trained to prepare a report that delineates the energy consumption characteristics of a building, identifies appropriate energy efficiency operations and maintenance procedures and recommends appropriate energy efficiency measures. The trust:

A. May develop separate programs for audits of different building types and functions when the trust determines that the skills or training needed to perform these audits merit the distinction;

B. Shall determine the content of the training, the hours required for course completion and the manner in which applicants must demonstrate proficiency in energy auditing;

C. Shall issue a certificate of completion to individuals who meet the requirements the trust has established;

D. May establish reasonable course fees. All fees must be paid to the Treasurer of State to be used by the trust for the purposes of this section;

E. Shall determine terms for the expiration and renewal of an applicant's certificate of completion;

F. Shall determine an appropriate means of maintaining recognition of the training received by persons holding a certification; and

G. Shall work with state agencies and other interested parties to establish standards through which energy auditors who perform any work under programs administered by the trust are certified.

**2 . Effective Date.** This section takes effect July 1, 2010.

PART E  
Affordable housing

**§ 4862. Maine Energy, Housing and Economic Recovery Program**

**3. Program elements.** The authority shall achieve the purposes of the program by applying the resources of the program to support construction or substantial rehabilitation of multifamily affordable rental housing units and replacement of manufactured housing units that do not meet the United States Department of Housing and Urban Development regulations, 24 Code of Federal Regulations, Part 3280. The resources of the program shall be allocated in the following manner:

A. At least 30% to the construction or substantial rehabilitation of multifamily affordable rental housing units serving seniors; as defined by the authority by rule;

B. At least 30% to the construction or substantial rehabilitation of multifamily affordable rental housing units serving persons of any age;

C. At least 10% to the construction or substantial rehabilitation of multifamily affordable rental housing units serving populations with special needs; as defined by the authority by rule; and

D. At least 10% to the replacement of manufactured housing units that do not meet the United States Department of Housing and Urban Development regulations, 24 Code of Federal Regulations, Part 3280. The replacement housing may not be "newer mobile homes," as described in section 4358, subsection 1, paragraph A, subparagraph (1);

*MaineHousing has rulemaking authority if it is needed. Defining these terms for this program in a rule could make it more difficult than necessary to integrate various program funds. MaineHousing generally defines terms in specific RFPs. This provides more flexibility.*

**§ 4863. Maine Energy, Housing and Economic Recovery Fund**

**5. Reporting.** By March 1, 2010, the ~~executive~~ director of the authority shall report to the joint standing committee of the Legislature having jurisdiction over affordable housing matters regarding the authority's actions taken to implement this subchapter. Not later than March 1, 2011 and March 1st of each year thereafter, the executive director shall report to the joint standing committee of the Legislature having jurisdiction over affordable housing matters on the status of the fund. The report must include, but is not limited to, the amount of revenue bonds issued under this subchapter, the type, location and cost of projects receiving bond proceeds, the number of housing units created by each project, the number of direct construction jobs created or maintained by each project, the amount of direct construction wages paid in creating or maintaining those jobs, and the total amount of building materials purchased in the development of each project.

*This is new language. We are happy enough to do this but wonder if it will create unnecessary paperwork headaches for the developers and contractors. We know that this kind of economic activity creates jobs and puts money into the economy. What is the goal here and is this the best way to achieve it?*

**PART G**  
**Workforce development**

**Sec. X. Workforce Development.** The Department of Labor, the Public Utilities Commission and the Maine State Housing Authority shall:

**1. Needs assessment.** By ~~September 1, 2009~~ January 1, 2010, perform an assessment of the energy efficiency and green industry workforce development needs in this State;

An Act Regarding Energy Independence

*All of the following edits relate to the voluntary carbon market.*

§ 9303. Efficiency Maine Plus

1. Establishment. Efficiency Maine Plus is established as an independent energy efficiency and renewable energy authority and is a public body corporate and politic and an instrumentality of the State. Efficiency Maine Plus shall plan, develop and implement energy conservation and efficiency programs, building weatherization programs, programs to reduce carbon emissions PRESERVING WHERE POSSIBLE AND APPROPRIATE THE OPPORTUNITY FOR CARBON EMISSION REDUCTIONS TO BE MONETIZED AND SOLD INTO THE VOLUNTARY MARKET, programs to promote renewable sources of energy and other energy-related programs as specified in this chapter. Efficiency Maine Plus shall plan, develop, coordinate and implement energy efficiency and renewable energy programs to meet the following goals:

- A. Reduce greenhouse gas emissions to 10% below 1990 levels by 2020, as established by the state climate action plan under Title 38, section 577;
- B. Weatherize 100% of Maine residences and 50% of Maine businesses by 2030;
- C. Reduce peak-load electric energy consumption by 100 megawatts by 2020; and
- D. Increase new jobs and business development to deliver energy efficiency and renewable energy products and services.
- E. ANY PROGRAM OF EFFICIENCY MAINE PLUS THAT SUPPORTS WEATHERIZATION OF BUILDINGS SHALL BE VOLUNTARY AND SHALL NOT CONSTITUTE A MANDATE TO THAT WOULD PREVENT THE SALE OF EMISSION REDUCTIONS GENERATED THROUGH WEATHERIZATION MEASURES INTO THE VOLUNTARY MARKET.

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4. Council duties and authority. The council shall establish and revise programs according to the goals and objectives in the quadrennial plan, approve program budgets and adopt protocols for evaluating program outcomes. The council:

- A. May determine the types of services and the extent to which program administration and implementation may be delivered by independent contractors;

B. Shall provide uniform, integrated planning, program design and administration of the programs established under this chapter;

C. Shall ensure that funds are expended for uses consistent with the state or federal authorities that created the funds and in a manner that ensures that:

(1) Processes for participation and program design are targeted to serve the multiple needs of energy consumers in this State;

(2) The effectiveness of programs is maximized by increasing and centralizing expertise, addressing conflicts of interest, mitigating the influence of politics, promoting flexible, nimble program management and providing a champion for funding cost-effective energy efficiency;

(3) The efficiency with which programs are planned, designed, overseen and delivered is maximized; and

(4) Sufficient checks and balances are provided to ensure consistency with public policy and accountability for meeting the principles set out in subparagraphs (1) to (3) so that energy efficiency programs in the State are sustainable for the long term;

D. Shall adopt rules establishing ~~develop~~ quantifiable measures of performance to which it will be held accountable to the Governor and the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. Measures of performance must be approved by negotiated between the council and the Governor and the joint standing committee. Measures must be established for a 4-year period, with revisions allowable by mutual agreement of the Governor and the joint standing committee. The council shall by rule also develop quantifiable measures of performance to which it will hold accountable all recipients of funding from the council and recipients of funds used to deliver energy efficiency and weatherization programs that are incorporated in the quadrennial plan and approved by the council. Such measures may include, but are not limited to, reduced energy consumption, reduced capacity demand for natural gas and electricity, reduced energy costs, reduced carbon dioxide emissions, program and overhead costs and cost-effectiveness, the number of new jobs created, the number of energy efficiency trainings or certification courses completed and the amount of sales generated. PROVIDED HOWEVER THAT ANY MEASURES DEVELOPED BY THE COUNCIL RELATED TO WEATHERIZATION PROGRAMS SHALL NOT CONSTITUTE A MANDATE TO WEATHERIZE AND SHALL NOT PREVENT THE SALE OF EMISSION REDUCTIONS GENERATED THROUGH VOLUNTARY WEATHERIZATION MEASURES INTO THE VOLUNTARY MARKET. Rules initially adopted under this paragraph are major substantive rules. Subsequent amendment to the rules are routine technical rules except that the council must provide copies of proposed amendments to the joint standing committee of the Legislature having jurisdiction over energy matters for review prior to adopting any amendment to the rules;

E. May make recommendations to the Governor, the Legislature and other public officials regarding energy efficiency, weatherization and renewable energy programs;

F. Shall coordinate energy efficiency and weatherization programs and carbon savings and renewable energy programs among the agencies that have responsibilities for these activities, in accordance with Title 2, section 9 and in such a way that these programs are complementary and that consumers can easily access programs from a single source;

G. Shall consult with the Maine State Housing Authority on matters of mutual interest that may include low-income energy conservation and assistance programs, building weatherization programs INCLUDING THE SALE OF CARBON EMISSION REDUCTIONS FROM WEATHERIZATION, relationships with financial partners, use of databases to capture energy and carbon savings and training of energy auditors and weatherization contractors; and

H. May establish technical advisory groups as needed for the purposes of gathering technical knowledge on any aspect of energy conservation or policy.

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#### § 9317. Building weatherization program

2. Building weatherization program. The council may establish a building weatherization program available to middle-income and upper-income homeowners and to commercial building owners that includes at a minimum pre-weatherization energy audits, weatherization services, post-weatherization audits and financing of the costs of the energy audits and weatherization services.

A. The goals of the program are to:

(1) Substantially improve the energy efficiency of and reduce carbon emissions from the State's building stock by reducing annual fuel consumption for heating and cooling by at least 20% in those buildings that receive weatherization services;

(2) Provide convenient and low-cost weatherization services to homeowners and commercial building owners; and

(3) Meet the objectives of the quadrennial plan of weatherizing all residential units and 50% of businesses in the State by 2030.

(4) PROVIDE THE OPPORTUNITY FOR THE MONETIZATION OF CARBON EMISSION REDUCTIONS FROM WEATHERIZATION ACTIVITIES VOLUNTARILY UNDERTAKEN PURSUANT TO PROGRAMS DEVELOPED BY EFFICIENCY MAINE PLUS.

B. Efficiency Maine Plus, through a cooperative agreement with the Maine State Housing Authority, may shall administer the program except with respect to weatherization of housing for low-income

persons, which portion of the program is administered by the Maine State Housing Authority. Program administration includes but is not limited to:

- (1) Working with banks and other private partners on program delivery;
- (2) Oversight of data collection and management;
- (3) Quality control of work done by qualified energy auditors and qualified contractors;
- (4) Marketing, public outreach, media relations and advertising of the program;
- (5) Customer interface through the Internet and on the telephone;
- (6) Establishing customer incentives to maximize participation in the program;
- (7) Trouble-shooting program elements and resolving problems; and
- (8) Coordination with other agencies involved in program administration and delivery.

C. NOTHING IN THIS CHAPTER SHALL CONSTITUTE A MANDATE TO WEATHERIZE BUILDINGS THAT WOULD PREVENT THE SALE OF CARBON EMISSION REDUCTIONS INTO THE VOLUNTARY MARKET.

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4. **Rulemaking.** The council may adopt rules or policies to implement this section. The rules may include but are not limited to rules that:

- A. Establish an energy-audit-based program under which priorities for weatherization are those recommendations from an energy audit that are cost-effective and will result in no less than a 20% savings in energy consumed;
- B. Establish a minimum package of weatherization services ~~THAT MAY BE~~ delivered to residents and businesses through a statewide network of authorized providers and supported by participating financial institutions;
- C. Establish standards and criteria for a statewide network of authorized providers and partnering financial institutions;
- D. Establish standards for qualified energy auditors and qualified contractors that includes certification requirements and professional or commercial liability and worker's compensation insurance;
- E. Provide for connecting database systems for purposes of monitoring the performance of building weatherization through energy audits and capturing the data so that the monetary value of energy and

carbon savings can be realized;

F. Establish program parameters or incentives to increase consumer participation in the program, based on best available information;

G. Provide for the creation and maintenance of a network of financial partners that can provide cost-effective financing for the program and establish standards for financial partners' participation in the program;

H. Provide for establishing and maintaining relationships with public and private partners who can support program administration, publicity, media relations, cost of materials and advertising for the program; and

I. Provide easily accessible outreach and program information to ensure maximum participation.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Energy and Carbon Savings Trustees

Jon,

The Energy and Carbon Savings Trustees have two minor concerns with the proposed committee bills. The first has to do with administrative costs and the second with funding renewable or alternative energy projects.

LD 276, *An Act To Protect the Integrity of the State's Carbon Dioxide Budget Trading Program and Auction Process and To Provide Allocations to the Energy and Carbon Savings Trust Fund*, sponsored by Senator Bartlett, has passed through the legislature and is waiting for the Governor's signature. This bill sets the Trust's administrative costs at no more than \$800,000 annually. It might be helpful for this change to be reflected in both Senator Bartlett's and Representative Fletcher's bill. I did notice that the administrative ceiling for the conservation program fund was changed from current law in both bills.

Secondly, the Trust has received requests from all over the state, including members of the legislature in LDs 755, 1013, 1075 & 1348 (prior to amendments), to fund renewable or alternative energy. Two of those bills were sponsored by members of the Maine's Energy Future committee. The Trustees are confident that these proposals would not fit within the 85% of funds that are allocated towards electricity conservation and question whether or not alternative and renewable energy projects qualify for the 15% dedicated towards fossil fuel conservation and efficiency. It would be helpful if the committee bill could clearly indicate whether or not the Trust can fund renewable and alternative energy projects.

Thank you for your consideration.

Sincerely,

Jean M. Guzzetti

Regional Greenhouse Gas Initiative Coordinator

Maine Public Utilities Commission

www.maine.gov/mpuc/

207.287.6345

Welzel, Conrad W.

From: Arey, Jonathan A.
Sent: Thursday, May 07, 2009 11:19 AM
To: Welzel, Conrad W.
Cc: Devlin, Sara K., Grover, Rebecca J.
Subject: LD 1201 - An Act Regarding Energy Independence

I think I like the original wording better than any of the amendments and here's why:

The **original wording** allows MaineDOT to "enter into occupancy agreements allowing the longitudinal underground installation of lines, cables, pipelines or other structures for the transmission of energy, communication transmission systems or related facilities within the rights-of-way of the state highway system, the federal interstate highway system, state-owned or state-controlled rail corridors or other state transportation corridors." The MTA is not mentioned – we are a part of the federal interstate highway system, so some would argue that the MTA is implicitly included. But the State of Maine does not own the Maine Turnpike – the state has no power to enter into agreements or leases of property, like the Maine Turnpike, which it does not own, and this section does not give them that right. If it did give them that right it would be an unconstitutional taking of property without compensation – our trustee would sue if MaineDOT attempted to start leasing MTA land under this section and I think our trustee would win. Also, no energy company would enter into such an agreement without much clearer indication that it will actually be able to use the property that it is negotiating to occupy. I would like to see an specific exception for the Maine Turnpike Authority, something like the following: "enter into occupancy agreements allowing the longitudinal underground installation of lines, cables, pipelines or other structures for the transmission of energy, communication transmission systems or related facilities within the rights-of-way of the state highway system, the federal interstate highway system, **excluding the Maine Turnpike Authority**, state-owned or state-controlled rail corridors or other state transportation corridors." That is the sure way to protect us.

The **Bartlett Amendment** introduces the concept of a study, which will report legislation back in December, 2009, on leasing transportation corridors. However, this amendment, *unlike the original bill, specifically includes the Maine Turnpike Authority by name!* It uses the term "state authority" and includes the Maine Turnpike Authority in that definition. It also provides that no state authority may make any "significant" lease until the legislature has approved the plan, which is a constraint of our powers that we do currently have to deal with. Presumably the study idea is generally beneficial to us because we will be able, during the course of the study, to explain to the commission the reasons the MTA needs to be independent from whatever the resulting legislation is, but there is always a chance that we will fail in that. If the study looks inevitable, then at least we will have a chance to make our case.

The **white paper amendment**, which I guess is the **Prefi Amendment**? This has the same problems as the Bartlett Amendment. It specifically includes us, constrains our power, etc. I don't think this amendment does us any favors. I kind of like the **Bartlett Amendment** better, actually.

The **Fletcher Amendment**, I think, is better. It leaves the Energy Independence Fund in place, which will be "funded from the revenues derived from the utilization of state assets for energy purposes", but it simply deletes all the references to MaineDOT, transportation corridors, and everything else, including the MTA, so it doesn't mention how the revenues are to be derived or what the vague term "state assets" means. I think I like this one best of all the options because it places no implied or explicit power over us.